

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE: B-214287

DATE: March 7, 1984

MATTER OF: Windham Power Lifts, Inc./
Quality Plus Equipment, Inc.

DIGEST:

1. Protest that award of negotiated contract was made after discussions and best and final offers rather than on the basis of initial offers is denied because discussions and best and final offers are the normal course of conduct in negotiated procurements. Award on the basis of initial offers is a permissive exception.
2. Protest that government "hurried" the contract award process to take advantage of a lower alternate offer is denied because there is no requirement that the government wait a minimum number of days after best and final offers before making award.
3. Protest that Defense Acquisition Regulation § 7-2002.4(e) requires government to accept protester's late modification that would have made it the low offeror is denied because that provision only applies to a situation where the late modification is submitted by the otherwise successful offeror. That is not the case here.

Windham Power Lifts, Inc. and Quality Plus Equipment, Inc. (Windham/Quality), protest the award of a contract to PSI under request for proposals No. FD 2060-83-58432, issued by the United States Air Force (Air Force). The protester argues that the Air Force conducted discussions and requested best and final offers, rather than awarding based on the initial proposals received. According to Windham/Quality, that permitted PSI to correct deficiencies in its proposal and to lower its price below Windham/Quality's low initial price. The protester also contends that the Air Force hurried its contract award process in order to take advantage of the price that made PSI the low offeror--an alternate offer which required that award be made within 30 days of the date for best and final offers. Finally, Windham/Quality contends that, in contravention of Defense

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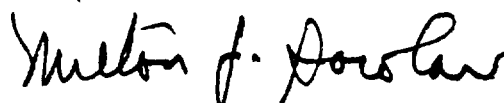
Acquisition Regulation (DAR) § 7-2002.4(e) (1976 ed.), the Air Force refused to consider a post-best-and-final offer from it that would have made it the low offeror.

Since it is clear from Windham/Quality's initial submission that the protest is without legal merit, we are deciding the case without further development, and we deny the protest. Nickens and Associates, B-212619, August 23, 1983, 83-2 CPD 245.

Concerning the protester's argument that the Air Force conducted discussions and requested best and final offers, DAR §§ 3-805.1 through 3-805.3 (Defense Procurement Circular No. 76-7, April 29, 1977) state that, in negotiated procurements, generally, discussions shall be held with all offerors in a competitive range, and the offerors must be given an opportunity to revise their proposals including price changes by a common best and final offer date. In limited circumstances, award may be made on the basis of initial proposals, without discussions and best and final offers. However, even where the circumstances are present, award on the basis of initial proposals is permissive, not mandatory. Consequently, the Air Force's actions were proper.

Regarding Windham/Quality's argument that the Air Force hurried the contract award process to take advantage of PSI's lower alternate price, we are unaware of any requirement that an agency wait a certain minimum number of days before awarding a contract, and the protester has cited no such requirement.

Finally, we do not agree that DAR § 7-2002.4(e) requires the Air Force to accept a late proposal in these circumstances. That section provides that the government may accept a late proposal modification from the otherwise successful offeror, which makes the terms of that offer more favorable to the government. An otherwise successful offeror means the offeror that has been selected for award. See, e.g., Blue Cross of Maryland, Inc., B-194810, August 7, 1979, 79-2 CPD 93. Here, Windham/Quality was not the otherwise successful offeror, so there was no basis to accept its late modification.


for Comptroller General
of the United States